

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

BOBBY L. MITCHELL,

Plaintiff

v.

CIVIL ACTION NO. 3:05cv1210 WKW

DEBBIE A. SWEET,

Defendant

**MOTION FOR SUBSTITUTION OF PARTY PLAINTIFF,
FOR ADDITION OF PARTY PLAINTIFF, FOR JOINDER OF
DEFENDANT AND FOR LEAVE TO AMEND COMPLAINT**

Clara S. Mitchell, as personal representative of the estate of Bobby L. Mitchell, deceased, moves this court for an order: 1) Substituting her as the plaintiff for Bobby L. Mitchell, the original named plaintiff; 2) Allowing Clara S. Mitchell, individually, to join in this action as a party plaintiff and to assert claims for her own personal injuries; 3) Adding State Farm Mutual Automobile Insurance Company, the underinsured motorist carrier, as a defendant to this action; and 4) Granting her leave to amend the complaint by substituting the attached "Amended Complaint" in its entirety for the original complaint filed in this action.

As grounds for her motion, Clara S. Mitchell, as personal representative of the estate of Bobby L. Mitchell, says that:

(1) Her husband, Bobby L. Mitchell, who originally filed this lawsuit on December 19, 2005 as a personal injury action, died on December 30, 2005, as a result of the injuries suffered in the vehicle wreck which is the subject of this litigation.

(2) Clara S. Mitchell was thereafter duly appointed personal representative of the estate of Bobby L. Mitchell, having been granted Letters Testamentary for his estate.

(3) Clara S. Mitchell, as personal representative of the estate of Bobby L. Mitchell, deceased, desires to continue the prosecution of this litigation by asserting a claim for the wrongful death of her husband, Bobby L. Mitchell, and by substituting that wrongful death claim for the personal injury claim stated in the original complaint, which will effectively dismiss the claim for personal injuries to Bobby L. Mitchell.

(4) Clara S. Mitchell, individually, says that she was personally injured in the motor vehicle accident which resulted in the death of her husband, and she wishes to join in this action individually to assert claims for her own personal injuries.

(5) It appears that the limits of liability insurance carried by the individual defendant, Debbie Sweet, will be insufficient to cover plaintiff's claims in this matter, and plaintiff desires to add State Farm Mutual Automobile Insurance Company as a defendant to this action in order to assert claims for underinsured motorist benefits for the wrongful death of her husband and for her own personal injuries.

Undersigned counsel for the plaintiff has consulted regarding this motion with Hunter C. Carroll, counsel for the defendant, Debbie A. Sweet, who consents to the relief requested in this motion.

THEREFORE, Clara S. Mitchell, as personal representative of the estate of Bobby L. Mitchell, deceased, moves this Honorable Court to order that she be substituted as plaintiff for Bobby L. Mitchell; Clara S. Mitchell, individually, requests leave to join in this action as a party plaintiff; Clara S. Mitchell, in her representative and individual capacities requests that State Farm Mutual Automobile Insurance Company be added as a defendant to this action, and Clara S. Mitchell, in her representative and individual capacities, requests an order allowing amendment of the original complaint by substitution of the attached "Amended Complaint" for the original complaint.

/s/Roger L. Lucas
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Hunter C. Carroll, Esq.
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/s/ROGER L. LUCAS

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